

Introduced by Senator Kehoe

February 11, 2009

An act to add Section 6009 to the Public Resources Code, and to amend Sections 2, 14, 19, 21, 30.5, 51, 57, and 68 of the San Diego Unified Port District Act (Chapter 67 of the Statutes of 1962, First Extraordinary Session), relating to tidelands and submerged lands.

LEGISLATIVE COUNSEL'S DIGEST

SB 139, as introduced, Kehoe. Tidelands and submerged lands: Ports.

(1) Existing law, the San Diego Unified Port District Act, provides for the San Diego Unified Port District. Under the act, the Board of Commissioners of the San Diego Unified Port District has the sole authority to adopt and modify a master plan for harbor and port improvement and for the use of the tidelands and submerged lands under the San Diego Unified Port District's jurisdiction.

This bill would provide that the master plan shall not be subject to municipal, county, or district initiatives or referendums but shall be subject to the California Coastal Act of 1976.

(2) Under the act, an ordinance calling for an election takes effect upon publication.

This bill would, instead, provide that an ordinance calling for an election on a referendum on the issuance of a revenue bond shall take effect upon publication.

(3) The bill would make findings and declarations regarding tidelands and submerged lands.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares both of
2 the following:

3 (a) Most of California's public ports and harbors are operated
4 on the state's tidelands and submerged lands that have been granted
5 in trust to local and regional public entities.

6 (b) Grantees should be able to manage the state's tidelands and
7 submerged lands, and public ports and harbors on those lands, for
8 the benefit of all the people of California and consistent with the
9 terms and obligations of their grants, without subjugation of
10 statewide interests, concerns, or benefits to the inclination of local
11 or municipal affairs, initiatives, or excises.

12 SEC. 2. Section 6009 is added to the Public Resources Code,
13 to read:

14 6009. The Legislature finds and declares all of the following:

15 (a) Upon admission to the United States, and as incident of its
16 sovereignty, California received title to the tidelands, submerged
17 lands, and beds of navigable lakes and rivers within its borders to
18 be held subject to the public trust for statewide public purposes
19 including commerce, navigation, fisheries, and other recognized
20 uses, and for preservation in their natural state.

21 (b) The state's power and right to control, regulate, and utilize
22 its tidelands and submerged lands when acting within the terms
23 of the public trust is absolute.

24 (c) Tidelands and submerged lands granted by the Legislature
25 to local entities remain subject to the public trust, and remain
26 subject to the oversight authority of the state by and through the
27 State Lands Commission.

28 (d) The purposes and uses of tidelands and submerged lands is
29 a statewide concern.

30 (e) Local initiatives to amend a grantee's or trustee's planning
31 documents or direct the use of trust resources are inconsistent with
32 the public trust.

33 SEC. 3. Section 2 of the San Diego Unified Port District Act
34 (Chapter 67 of the Statutes of 1962, First Extraordinary Session)
35 is amended to read:

36 Sec. 2. It is hereby declared to be the policy of the State of
37 California to develop the harbors and ports of this State for multiple
38 purpose use for the benefit of *all* the people of the State of

California. A necessity exists within San Diego County for such development. Because of the several separate cities and unincorporated populated areas in the area hereinafter described, only a specially created district can operate effectively in developing the harbors and port facilities. Because of the unique problems presented by this area, and the facts and circumstances relative to the development of harbor and port facilities, the adoption of a special act and the creation of a special district is required.

SEC. 4. Section 14 of the San Diego Unified Port District Act (Chapter 67 of the Statutes of 1962, First Extraordinary Session) is amended to read:

Sec. 14. Upon the establishment of the district, every city specified in Section 5 shall convey to the district all its right, title and interest in and to the tidelands and submerged lands, together with any facilities thereon, which are owned by the city, including any such lands which have been granted in trust to the city by the State in the Bay of San Diego. The City of San Diego shall convey to the district all its right, title and interest in and to such pueblo lands as lie within the tidelands and submerged lands in the Bay of San Diego, together with any facilities thereon, which are owned by the City of San Diego. Thereafter the title to such lands shall reside in the district, and the district shall hold such lands in trust *for the benefit of all the people of the state* for the uses and purposes *consistent with the public trust* and upon the conditions which are declared in this act. Notwithstanding any other provision of this act, the City of San Diego shall not be required to convey to the district those lands described in Chapter 778 of the Statutes of 1929, and the City of Coronado shall not be required to convey to the district those lands described in Chapter 1839 of the Statutes of 1953.

SEC. 5. Section 19 of the San Diego Unified Port District Act (Chapter 67 of the Statutes of 1962, First Extraordinary Session) is amended to read:

Sec. 19. The board shall draft a master plan for harbor and port improvement and for the use of all of the tidelands and submerged lands which shall be conveyed to the district pursuant to the provisions of this act. A two-thirds vote of the board shall be required to adopt the plan. ~~The board may from time to time modify the master plan by a two-thirds vote of the board~~ *the only means*

1 *by which a master plan may be adopted or modified. The master*
2 *plan shall not be subject to municipal, county, or district initiatives*
3 *or referendums, but shall be subject to the California Coastal Act*
4 *of 1976 (Division 20 (commencing with Section 30000) of the*
5 *Public Resources Code).*

6 The provisions in the master plan shall not override or supersede
7 any local existing zoning ordinance which was in effect on April
8 30, 1962; provided, that if any local zoning ordinance is repealed,
9 or expires, or becomes nonoperative for any reason, thereafter the
10 provisions of the master plan adopted by the board shall control
11 as to all lands and waters under the jurisdiction of the district.

12 SEC. 6. Section 21 of the San Diego Unified Port District Act
13 (Chapter 67 of the Statutes of 1962, First Extraordinary Session)
14 is amended to read:

15 Sec. 21. The board may pass all necessary ordinances and
16 resolutions for the regulation of the district.

17 The enacting clause of all ordinances passed by the board shall
18 be in substantially the following form:

19 “The Board of Port Commissioners of San Diego Unified Port
20 District do ordain as follows:”

21 All ordinances and resolutions shall be signed by the chairperson
22 of the board and attested by the clerk.

23 All ordinances and resolutions shall be entered in the minutes.
24 All ordinances passed by the board shall be published, within 15
25 days from the passage thereof, with the names of the members
26 voting for and against them at least once, in some daily newspaper
27 of general circulation printed and published in the district.

28 Ordinances passed by the board shall not go into effect until the
29 expiration of 30 days from the date of their passage by the board,
30 except ordinances ordering or otherwise relating to the following
31 which shall take effect upon their publication:

32 (a) An election *on a referendum as authorized pursuant to*
33 *Section 51.*

34 (b) The adoption of the annual budget.

35 (c) The bringing or conducting of suits or actions.

36 (d) The condemnation of private property for public use.

37 (e) The immediate preservation of the public peace, health or
38 safety, which ordinance shall contain a specific statement showing
39 its urgency and be passed by a two-thirds vote of the board.

1 A grant, or franchise, lease, right or privilege shall never be
2 construed to be an urgency measure.

3 All grants, franchises, leases, permits, rights or privileges for
4 five years or less may be made by the executive director in
5 accordance with any regulations the board prescribes by resolution,
6 and all grants, franchises, leases, permits, or privileges for more
7 than five years shall be made by ordinance, except leases or
8 installment sales to or from a joint powers authority or nonprofit
9 corporation in connection with the issuance of bonds or certificates
10 or participation which may be authorized by resolution. Irrevocable
11 permits shall not be granted or issued to any person.

12 SEC. 7. Section 30.5 of the San Diego Unified Port District
13 Act (Chapter 67 of the Statutes of 1962, First Extraordinary
14 Session) is amended to read:

15 Sec. 30.5. (a) The district may undertake the activities
16 authorized in Section 27 or listed in paragraph (2) of subdivision
17 (b) of Section 30 outside of the lands listed in subdivision (b) of
18 Section 5 if all of the following occur:

19 (1) The activities are adjacent to the lands listed in subdivision
20 (b) of Section 5.

21 (2) The board finds that adequate areas for these activities do
22 not presently exist within the lands listed in subdivision (b) of
23 Section 5.

24 (3) The activities are necessary or incidental to carrying out the
25 purposes described in Section 87.

26 (b) At least 60 days before making a capital expenditure in
27 excess of one hundred thousand dollars (\$100,000), but not more
28 than one million dollars (\$1,000,000), in or on the lands specified
29 in subdivision (a), the district shall give written notice of that
30 proposed expenditure to the State Lands Commission. The notice
31 shall set forth the trust purposes, as set forth in this act, for which
32 the proposed expenditure will be made.

33 (c) The district shall not make capital expenditures in excess of
34 one million dollars (\$1,000,000) in or on lands listed in subdivision
35 (a) unless the State Lands Commission approves the expenditure
36 pursuant to Chapter 2 (commencing with Section 6701) of Part 2
37 of Division 6 of the Public Resources Code.

38 (d) At least 60 days before making a capital expenditure of not
39 more than two hundred fifty thousand dollars (\$250,000) in or on
40 the lands that are not adjacent to lands specified in subdivision (b)

1 of Section 5, the district shall give written notice of that proposed
2 expenditure to the State Lands Commission. The notice shall set
3 forth the trust purposes, as set forth in this act, for which the
4 proposed expenditure will be made.

5 The district shall not make capital expenditures in excess of two
6 hundred fifty thousand dollars (\$250,000) in or on lands that are
7 not adjacent to lands specified in subdivision (b) of Section 5 unless
8 the State Lands Commission approves the expenditure pursuant
9 to Chapter 2 (commencing with Section 6701) of Part 2 of Division
10 6 of the Public Resources Code.

11 (e) Any property acquired by the district shall become an asset
12 of the public trust *of the State of California* and be subject to
13 Section 87.

14 SEC. 8. Section 51 of the San Diego Unified Port District Act
15 (Chapter 67 of the Statutes of 1962, First Extraordinary Session)
16 is amended to read:

17 Sec. 51. (a) Whenever the board deems it necessary for the
18 district to incur a revenue bonded indebtedness for the acquisition,
19 construction, completion or repair of any or all improvements,
20 works, property or facilities authorized by this act or necessary or
21 convenient for the carrying out of the powers of the district, the
22 board shall issue those revenue bonds in accordance with the
23 provisions of the Revenue Bond Law of 1941 (Chapter 6
24 (commencing with Section 54300) of Part 1 of Division 2 of Title
25 5 of the Government Code).

26 Article 3 (commencing with Section 54380) of Chapter 6 of Part
27 1 of Division 2 of Title 5 of the Government Code and the
28 limitations set forth in subdivision (b) of Section 54402 of the
29 Government Code shall not apply to the issuance and sale of bonds
30 pursuant to this section. Instead, by ordinance adopted by
31 two-thirds of all the members of the board and subject to
32 referendum, the board may provide for the issuance of those bonds,
33 and, unless the ordinance is subjected to referendum *pursuant to*
34 *Article 2 (commencing with Section 9340) of Chapter 4 of Division*
35 *9 of the Elections Code*, no election shall be required to authorize
36 the issuance of the bonds. To initiate a referendum, a petition
37 protesting against the adoption of such ordinance shall be signed
38 by voters of the district equal in number of at least 5 percent of
39 the entire vote cast within the district for all candidates for
40 Governor at the last gubernatorial election.

1 The ordinance shall specify all of the following:

2 (1) The purposes for which the bonds are to be issued, which
3 may include any one or more purposes authorized by this section
4 or this act.

5 (2) The maximum principal amount of the bonds.

6 (3) The maximum term for the bonds.

7 (4) The maximum rate of interest, fixed or variable, to be
8 payable upon the bonds.

9 (5) The maximum discount or premium on the sale of bonds.

10 (b) For the purposes of issuing and selling revenue bonds
11 pursuant to this section, the following definitions are applicable
12 to the Revenue Bond Law of 1941 (Chapter 6 (commencing with
13 Section 54300) of Part 1 of Division 2 of Title 5 of the Government
14 Code):

15 (1) “Enterprise” means any purpose, operation, facility, system,
16 improvement, or undertaking of the district from which revenues
17 are derived or otherwise allocable, which revenues are or may, by
18 resolution or ordinance, be required to be separately accounted for
19 from other revenues of the district.

20 (2) “Fiscal agent” means any fiscal agent, trustee, paying agent,
21 depository, or other fiduciary provided for in the ordinance
22 authorizing the issuance of the bonds. The fiscal agent may be
23 located within or without the state.

24 (3) “Ordinance” means, unless the context otherwise requires,
25 the instrument providing the terms and conditions for the issuance
26 of the revenue bonds, and may be an indenture, resolution,
27 ordinance, lease, installment sale, agreement, or other instrument
28 in writing.

29 (c) Each ordinance shall provide for the issuance of revenue
30 bonds in the amounts as may be necessary, until the full amount
31 of the bonds authorized has been issued. The full amount of bonds
32 may be divided into two or more series with different dates of
33 payment fixed for the bonds of each series. A bond need not mature
34 on its anniversary date. Any provision of the Revenue Bond Law
35 of 1941 (Chapter 6 (commencing with Section 54300) of Part 1
36 of Division 2 of Title 5 of the Government Code) that is
37 inconsistent with this section or this act shall not be applicable.

38 (d) The district may issue refunding revenue bonds to redeem
39 or retire any revenue bonds issued by the district upon the terms,
40 at the times, and in the manner which the board, by ordinance,

determines. Refunding bonds may be issued in a principal amount sufficient to pay all, or any part of, the principal of the outstanding bonds, the premiums, if any, due upon call and redemption thereof prior to maturity, all expenses of the refunding, and either of the following:

(1) The interest upon the refunding bonds from the date of sale thereof to the date of payment of the bonds to be refunded out of the proceeds of the sale of the refunding bonds or to the date upon which the bonds to be refunded will be paid pursuant to call or agreement with the holders of the bonds.

(2) The interest upon the bonds to be refunded from the date of sale of the refunding bonds to the date of payment of the bonds to be refunded or to the date upon which the bonds to be refunded will be paid pursuant to call or agreement with the holders of the bonds.

(e) This section provides a complete, additional, and alternative method of performing the acts authorized by this section, and the issuance of revenue bonds, including refunding revenue bonds, need not comply with any other law applicable to borrowing or the issuance of bonds.

SEC. 9. Section 57 of the San Diego Unified Port District Act (Chapter 67 of the Statutes of 1962, First Extraordinary Session) is amended to read:

Sec. 57. The board may acquire, construct, erect, maintain or operate within the district, all improvements, utilities, appliances or facilities which are necessary or convenient for the promotion and accommodation of commerce, navigation, fisheries, and recreation, or their use in connection therewith upon the lands and waters under the control and management of the board, and it may acquire, maintain and operate facilities of all kinds within the district *on behalf of all the people of the State of California*.

SEC. 10. Section 68 of the San Diego Unified Port District Act (Chapter 67 of the Statutes of 1962, First Extraordinary Session) is amended to read:

Sec. 68. The State hereby consents to the county or any city which has elected to join the district established under the provisions of this act to grant its right, title and interest in and to the tidelands, submerged lands, whether filled or unfilled, swamp, overflowed, and salt marshlands in the Bay of San Diego, which are owned by the county or any city, including any such lands

1 which have been granted in trust to the county or city by the State,
2 to the district in trust *for the benefit of all the people of the state*
3 for the uses and purposes *consistent with the public trust* and upon
4 the conditions specified in this act. The county or such city may
5 also transfer, relinquish and surrender to the district its power to
6 manage, conduct and operate the harbor in or adjacent to which
7 such portion of such lands are situated. The district shall, upon its
8 establishment in accordance with the provisions of this act, become
9 the successor of the county or such city whose tide and submerged
10 lands shall have been included therein with respect to the
11 management, conduct and operation of the harbor and with respect
12 to the use, possession and title to such portions of such lands, and
13 they shall continue to be held and used by the district pursuant to
14 this act.

15 SEC. 11. The amendment of Sections 2, 14, 19, 21, 30.5, 51,
16 57, and 68 of the San Diego Unified Port District Act (Chapter 67
17 of the Statutes of 1962, First Extraordinary Session) made by this
18 act does not constitute a change in, but is declaratory of, existing
19 law.